GRANTING CONCESSIONS FROM PUBLISHED INTERSTATE RAILROAD RATES. Section 10 of the Interstate Commerce Act as amended in 1889 made it a misdemeanor to obtain transportation at less than the regular rate by means of false billing, and provided that violations of this section should be prosecuted in any federal court having jurisdiction of crimes in the district in which the offense was committed.[1] The federal statutes provide that when any offense against the United States is begun in one circuit and completed in another the courts of either circuit shall have jurisdiction over the whole offense.[2] Under these enactments it has been held that the offense of obtaining transportation at less than the regular rate by means of false billing is complete in the district in which the goods were delivered to the carrier, that actual carriage is not an essential element of the offense, and that courts in the district to which the goods were transported have no jurisdiction.[3] The Elkins Act of 1903, amending the Interstate Commerce Act, provided that the offense of giving or accepting concessions from the published rate should be prosecuted in any court of the United States having jurisdiction of crimes in the district in which the offense was committed or "through which the transportation is conducted."[4] The Act also embodies the section of the federal statutes in regard to offenses begun in one jurisdiction and completed in another. These amendments made by the Elkins Act are substantially unaltered by the legislation of 1906. It remains for the courts, therefore, to determine the exact effects of the changes made by the Elkins Act.

Though jurisdiction is given to courts in the districts through which transportation is conducted, it is not probable that actual carriage has been made an essential element of the offense of obtaining the forbidden concessions. It is true that giving a "free pass" is not a violation of the section of the Interstate Commerce Act forbidding the granting of preferences unless actual transportation is secured.[5] But the concessions under consideration are like the concessions obtained by false billing, and if the goods are delivered to the carrier, and the concession secured, even if the goods are lost before actual carriage, there is little doubt an indictment would be sustained. Consequently there is ground for holding that the provision under consideration is unconstitutional in that it provides for the prosecution of an offense in districts other than that in which it was committed.[6] However, in a recent federal case where the goods were delivered and the concession received in one district, and the prosecution instituted in a different district, but one through which the transportation had been conducted, it was held that the court had jurisdiction. *Armour Packing Co.* v. *United States*, 153 Fed. 1 (C. C. A., Eighth Circ.). In the decision, while it is tacitly admitted that the offense is complete when the concession is obtained and the goods delivered to the carrier, the clause giving jurisdiction to courts in the districts through which the transportation is conducted is held constitutional by resorting to the analogy of the fiction of continuing trespass made use of

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[1] 25 Stat. at L. 858.
[2] 14 Stat. at L. 484.
[3] Davis *v.* United States, 104 Fed. 136.
[4] 32 Stat. at L. 847. By this act it is made unlawful "to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce."
[5] *In re* Huntington, 68 Fed. 881.
[6] See Amend. VI.

in some cases of larceny.[7] Obtaining concessions whereby transportation at less than the published rate is secured is considered a continuing act. If the illegal act is complete when the concession is secured and the goods delivered to the carrier, it is difficult to see how part of the same illegal act is committed every time the goods pass into a new district.

EXCLUSIVE FEDERAL CONTROL OVER NATIONAL BANKS. — It was early settled that Congress had the power to create national banks, as instruments "necessary and proper" for carrying on the fiscal operations of government.[1] And to enable these banks to exercise their national functions of providing a currency and of creating a market for government loans, the grant of ordinary banking powers is justified.[2] Furthermore, to assure the efficiency of these federal agencies, it is necessary that both in the exercise of their national functions and in their ordinary banking business they should be protected from any state interference which might impair or destroy their usefulness. It is accordingly settled that a state cannot tax a national bank, unless the federal government give special permission.[3] It seems obvious that any interference with the purely national functions of the bank is unconstitutional. The ordinary business, on the other hand, is done under the general state laws unless some special act of Congress covers the matter.[4] Thus, a national bank ordinarily takes title to property subject to the qualifications imposed by the state law.[5] Similarly, a state law, which exempts from trustee process negotiable paper transferred before due to a bank within the state, is valid although it works to the discrimination and disadvantage of a national bank without the state.[6] In this class of cases the state law interferes with the bank, but as it touches only the general business and does not conflict with any express law, it is upheld. But Congress, having the right to grant general banking powers, can regulate the exercise of those powers and protect the banks in that business. Unless the law be unconstitutional because not a reasonable exercise of the power to regulate or protect, or because contrary to some constitutional provision such as the Fourteenth Amendment, it will supersede the state law which formerly controlled. The national laws may supersede all state laws on the subject, or they may be merely supplemental and overrule only the laws in direct conflict. An example of the latter class is the case where the federal law mentions certain crimes of bank officers. For these crimes the officers can only be punished by the national government, but that does not prevent the state from punishing for other crimes committed by bank officers contrary to state laws.[7] But if, on the other hand, the national government undertakes to make a system of rules and regulations covering an entire subject, such as the insolvency of a national bank, all state laws on the subject, even if not in direct conflict with the federal law, are annulled.[8] Sim-

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[7] See 12 HARV. L. REV. 425.

[1] McCulloch *v.* Maryland, 4 Wheat. (U. S.) 316.
[2] Osborn *v.* Bank, 9 Wheat. (U. S.) 738.
[3] McCulloch *v.* Maryland, *supra*; People *v.* Bank, 123 Cal. 53.
[4] McClellan *v.* Chipman, 164 U. S. 347.
[5] Bank *v.* Augusta, etc., Co., 104 Ga. 403.
[6] Hawley *v.* Hurd, etc., Co., 72 Vt. 122.
[7] State *v.* Tuller, 34 Conn. 280.
[8] Easton *v.* Iowa, 188 U. S. 220. See 17 HARV. L. REV. 133.